

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN ORDER)	<u>ORDER</u>
AUTHORIZING PAETEC COMMUNICATIONS, INC. TO)	
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)	
TELECOMMUNICATIONS SERVICES THROUGHOUT)	
THE STATE OF NEW JERSEY)	DOCKET NO. TE02060319

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated June 3, 2002, PaeTec Communications, Inc. ("Petitioner" or "PaeTec") filed a Petition with the Board of Public Utilities ("Board") requesting authority to provide competitive local exchange and interexchange telecommunications services throughout the State of New Jersey. Petitioner requests confidential treatment of the financial information in Exhibit 4 of its Petition.¹

PaeTec was incorporated under the laws of the State of Delaware on May 19, 1998 and amended on October 28, 1999. Petitioner's principal offices are located at 1 PaeTec Plaza, 600 Willowbrook Office Park, Fairport, New York 14450.

Petitioner has submitted copies of its Articles of Incorporation, Delaware Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, PaeTec was formed to provide local exchange and interexchange telecommunication services. Petitioner states that it is currently certified to provide resold and/or facility based local exchange and/or interexchange service nationwide except for the state of Alaska. To date no complaints have been filed against PaeTec. PaeTec states that it has never been denied certification to provide telecommunications services in any jurisdiction. PaeTec stated that it currently has interconnection agreements with Verizon-NJ for network elements and resale, and Sprint-United for traffic exchange.

¹ Pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., Petitioner has been notified that the Board shall handle such requests for confidential treatment in accordance with the Board's proposed regulations at N.J.A.C. 14:1-12 et seq.

In its Petition, Petitioner seeks authority to offer local exchange and interexchange telecommunications services to customers throughout New Jersey. PaeTec currently offers resold local exchange and interexchange telecommunication services in the New Jersey service area of Verizon-NJ. PaeTec now wishes to expand and enhance its services by offering a combination of its facilities and network elements leased from Verizon-NJ.

PaeTec's exchange services may include, but not be limited to: (i) local exchange access services to single-line, multi-line and Centrex customers; (ii) local exchange services to customers of Petitioner's end user access line services; and (iii) dedicated and special carrier access services. Nationwide, PaeTec offers a full suite of integrated services mostly to business customers. These services include local, long distance, data, web hosting access, and other enhanced services. PaeTec also offers wholesale services such as private line, special access and prepaid calling card services to other telecommunications carriers.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8, N. J. A. C. 14:1-4.3 and 14:10 -1.16 which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts (USOA), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP) and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Fairport, New York. Petitioner also states, upon written notice from the Board, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner states that approval of its Petition will enhance the telecommunication infrastructure in the State of New Jersey and will facilitate economic development.

With regard to its technical and managerial qualifications, PaeTec states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to PaeTec, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

Petitioner states it is a privately held corporation and maintains its financial information is confidential. Therefore, Petitioner requests its financial statements be submitted under seal.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat.56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed PaeTec's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner has demonstrated it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff and the submission of pro forma financial statements. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and the Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements, i.e., balance sheet, income statement, statement of change in cash flow and statement of change in equity, have been provided.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N.J.S.A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Telecommunications, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenue from operations form is due on or before March 31 and June 1 of the following year, respectively.

If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 02/06/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION FOR AN ORDER AUTHORIZING
PAETEC COMMUNICATIONS, INC.
TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES THROUGHOUT NEW JERSEY
DOCKET NO. TE02070319

SERVICE LIST

Serial No.	Name and Address	Serial No.	Name and Address
1	Petitioner's Contact Person: J T Ambrosi V P, Carrier & Government Relations PaeTec Communication, Inc. 1 PaeTec Plaza 600 Willowbrook Office Park Fairport, New York 14450	5	Board's Staff: Walter P. Szymanski, Director Division of Audits Board of Public Utilities Two Gateway Center Newark, New Jersey, 07102
2	Petitioner's Attorney: Dennis C. Linken Stryker, Tams & Dill LLP Two Penn Plaza East Newark, New Jersey 07105	6	Board's Staff: Anthony Centrella, Director Division of Telecommunications Board of Public Utilities Two Gateway Center Newark, New Jersey 07102
3	Ratepayers Advocate: Seema M. Singh, Esquire Acting Director and Ratepayer Advocate Division of Ratepayer Advocate 31 Clinton Street, 11 th Floor P.O. Box 46005 Newark, New Jersey 07101	7	Board's Staff: James F. Murphy, Chief Bureau of Revenue Requirements Division of Telecommunications Board of Public Utilities Two Gateway Center Newark, New Jersey 07102
4	Ratepayers Advocate: Ava-Marie Madeam, Esquire Division of Ratepayer Advocate 31 Clinton Street, 11 th Floor P.O. Box 46005 Newark, New Jersey 07101	8	Board's Staff - DAG: Peter Tanella Department of Law & Public Safety Division of Law 124 Halsey Street, 5 th Floor P.O. Box 45029 Newark, New Jersey 07102
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